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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

REUBEN BERENBLAT, ANDREW
PERSONETTE, EARL C. SIMPSON,
LAURA MILLER, On behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

APPLE INC.,

Defendant.

THOMAS WAGNER, SCOTT
MEYERS, On behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

APPLE, INC.,

Defendant.

Case No. C-08-04969 JF (PVT)
Case No. C-09-01649 JF (PVT)

SECOND AMENDED
CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiffs, by their attorneys, as and for their class action complaint, allege,
2 with personal knowledge as to their own actions, and upon information and belief as
3 to those of others, as follows:

4 **NATURE OF THIS CASE**

5 1. This class action seeks to redress the widespread and commonplace
6 characteristic defect and design flaw existing at the time of manufacture which
7 renders one or more of Apple's PowerBook G4's memory slots inoperative during
8 the computer's useful life. This inherent design defect manifests itself when a
9 PowerBook owner adds additional memory (RAM) to the first or second (upper or
10 lower) memory slot available in most PowerBooks, including the PowerBook G4.
11 Typically, when the additional memory is added, the PowerBook does not recognize
12 the memory, resulting in slower processing speeds, decreased computer function and
13 other computing problems. Unfortunately for consumers, because both memory
14 slots are hardwired to the PowerBook's motherboard, consumers who choose to
15 repair the defect can incur costs of more than \$500 in parts and labor.

16 2. Moreover, the inherent defect often manifests itself months or even
17 years after purchase of a new PowerBook and/or installation of memory (RAM) in a
18 memory slot.

19 3. Apple was aware of the widespread defect at least by 2004, yet
20 continued to market and sell defective PowerBook computers to the public.

21 4. In response to thousands of complaints from its PowerBook customers,
22 Apple admitted that its PowerBooks, specifically certain PowerBook G4 models,
23 have defective memory slots. But aside from a limited number of PowerBooks
24 manufactured between January 2005 and April 2005, Apple has refused to repair the
25 defect.

26 5. As a result of Apple's actions, thousands of its customers have
27 purchased PowerBook computers with defective memory slots. Apple has refused to
28 repair the defect free of charge, and has refused its customers' requests for refunds

1 or exchanges of their defective PowerBooks. As such, thousands of Apple
2 PowerBook owners have been compelled to either repair the defective memory slot
3 at their own expense or lose permanently the ability to add additional memory to
4 their computers.

5 6. This suit is brought on behalf of a nationwide class of all persons who
6 have purchased Apple PowerBook computers, including but not limited to the
7 PowerBook G4, manufactured with defective memory slots, between January 1,
8 2005 to the present (the "Class"), including a sub-class of persons who purchased
9 PowerBook G4 computers directly from Defendant (the "Sub-Class"). It seeks, inter
10 alia, restitution and/or compensatory damages for Plaintiffs and each Class member,
11 including but not limited to: reimbursement of expenses incurred to repair defective
12 memory slots; attorneys' fees; and the costs of this suit.

13 **JURISDICTION AND VENUE**

14 7. Jurisdiction in this civil action is authorized pursuant to 28 U.S.C.
15 § 1332(d), as Plaintiffs' citizenship is diverse from Defendant, there are more than
16 100 class members, and the amount in controversy is in excess of \$5 million.

17 8. Venue is proper in this district under 28 U.S.C. § 1391(b)(2), as a
18 substantial part of the events or omissions giving rise to Plaintiffs' claims occurred
19 in the Northern District of California.

20 9. Venue is also proper in this district under 28 U.S.C. § 1391(a)(2), on
21 the grounds that a substantial part of the events relating to Plaintiffs' claims occurred
22 in the Northern District of California.

23 **INTRADISTRICT ASSIGNMENT**

24 10. Plaintiffs respectfully request that this matter be assigned to the San
25 Jose Division because a substantial portion of the actions and omissions giving rise
26 to this action occurred in Santa Clara County, California. Specifically, Defendant's
27 marketing of the PowerBook G4, Defendant's communications about the Extended
28

1 Warranty and Defendant's refusal to repair the defective memory slots all emanated
2 from its principal place of business in Cupertino, California.

3 **PARTIES**

4 11. Plaintiff Reuben Berenblat is a resident of the State of New York,
5 County of Nassau. Mr. Berenblat purchased an Apple PowerBook G4 with a
6 defective memory slot directly from Apple over the Internet. Mr. Berenblat seeks to
7 represent the Class and Sub-Class.

8 12. Plaintiff Andrew Personette is a resident of the State of New York,
9 County of Kings. Mr. Personette acquired an Apple PowerBook G4 from the Apple
10 store in New York City. Mr. Personette seeks to represent the Class and Sub-Class.

11 13. Plaintiff Earl "Duke" Simpson is a resident of the State of Washington,
12 County of Clark. Dr. Simpson purchased an Apple PowerBook G4 from MacShop
13 Northwest in Oregon, which is identified on Apple's website as an authorized
14 reseller and service provider. Dr. Simpson seeks to represent the Class.

15 14. Plaintiff Laura Miller is a resident of the State of California, County of
16 San Francisco. Ms. Miller purchased an Apple PowerBook G4 from a third party
17 internet vendor. Ms. Miller seeks to represent the Class.

18 15. Plaintiff Thomas Wagner is a resident of Asheville, North Carolina,
19 County of Buncombe. Mr. Wagner purchased an Apple PowerBook G4 from a
20 third-party internet vendor. Mr. Wagner seeks to represent the Class.

21 16. Plaintiff Scott Meyer is a resident of Brookings, South Dakota, County
22 of Brookings. Mr. Meyer purchased an Apple PowerBook G4 from a third-party
23 internet vendor. Mr. Meyer seeks to represent the Class.

24 17. Defendant Apple Inc. is incorporated under the laws of the State of
25 California, with its principal place of business located in Cupertino, California.

26 18. Defendant Apple Inc. does actual business throughout the State of
27 California, including through the direct sale of its merchandise in the State and
28

1 operation and maintenance of an interactive website – *apple.com* – accessible to
2 consumers in, and residents of, California.

3 **OPERATIVE FACTS**

4 ***Apple's Turbulent Times***

5 19. Defendant Apple Inc. is a publicly traded company engaged in the
6 business of designing, manufacturing, marketing, distributing and selling personal
7 computers and related products and services through its own retail stores, online,
8 direct sales, third party wholesalers and resellers.

9 20. Following its establishment in 1976, Apple developed a cult-like
10 following for its computers that were promoted as being uniquely engineered and
11 aesthetically pleasing. Apple's early years were so promising that, when it launched
12 an initial public offering in 1980, it generated more capital than any IPO since the
13 Ford Motor Company in 1956.

14 21. However, by the mid-1990s, Apple rapidly lost market-share and
15 introduced a series of products that were deemed financial failures.

16 22. In an attempt to reinvigorate its brand, Apple partnered with IBM to
17 create a new computing platform and to reverse its fortunes. Apple's reinvention
18 included the introduction of the initial PowerBook series of computers.

19 ***The Introduction of the PowerBook G4***

20 23. In or about January 2001, Apple began designing, manufacturing,
21 warranting, advertising, marketing, selling and providing PowerBook G4 laptop
22 computers to consumers throughout the United States. Between 2001 and 2003,
23 Apple produced the Titanium PowerBook G4; between 2003 and 2006, the
24 Aluminum models were produced.

25 24. When the Aluminum PowerBook G4s were released in January 2003,
26 Apple marketed them as being designed to exacting standards and touted their many
27 features, including the fact that each Aluminum PowerBook G4 has two memory
28 slots. The memory slots are an essential feature of the computer, and are marketed

1 so as to give consumers the ability to expand the PowerBook's random access
2 memory (RAM).

3 25. RAM is the main memory of a computer, in which data can be stored or
4 retrieved from all locations at the same time. As programs and files fill up a laptop's
5 memory, the machine will slow down. The ability to expand the memory is material
6 to purchasers, and affects the product's price. Reasonable consumers expect that
7 they would not need to expand the memory, and use the extra memory slots, until
8 after a year or more – or beyond the limited one-year warranty that came standard
9 with the Apple PowerBook.

10 26. Indeed, Apple represented to PowerBook purchasers on packaging, in
11 the technical specifications, and in the PowerBook product manual, that the
12 computer could support additional RAM up to a total of 2GB when the consumer
13 needed to expand memory. Apple maintained this representation from at least May
14 2001 through December 2005. For example, the PowerBook Technology Overview
15 provided, "For a considerable performance improvement when working with large
16 files, the memory in the 12-inch model can be expanded to 1.25Gb, and the 15-inch
17 and 17-inch models can accommodate up to 2GB. Both the 15-inch and 17-inch
18 models come with 512MB of memory ... leaving a slot open for future memory
19 upgrades."

20 ***Apple Conceals the Growing Problems with PowerBook Memory Slots***

21 27. Based on Apple's own admissions, however, certain of its PowerBook
22 G4 computers were manufactured with defective memory slots. Indeed, either or
23 both of the memory slots have an inherent defect existing at the time the computer is
24 manufactured.

25 28. As Apple has admitted in an article posted on its website, affected
26 PowerBook G4 computers exhibit at least one of the following symptoms upon
27 installation of RAM memory in the lower memory slot: (1) The computer does not
28 start up; or (2) The computer does not recognize that the lower memory slot is filled,

1 thus degrading system performance because the memory in only one slot is
2 recognized.

3 29. Apple has also admitted that the problems may only occur
4 intermittently, and that an owner of a PowerBook with a defective memory slot may
5 not know or become aware of the defect until months, or years, after installation of
6 memory in the defective memory slot.

7 30. Although the useful life of a laptop or notebook computer is five years,
8 the inherent defect in the Apple PowerBook G4 computer memory slots render the
9 computers substantially certain to malfunction during the computer's useful life.

10 31. As early as November 2004, consumers began posting complaints about
11 the PowerBook memory slots:

12 Jim_Babcock

13 11-09-2004, 04:41 PM

14 I added an off brand 1 gig module to the lower slot on my
15 wife's 17 inch PB. The extra memory was recognized but
16 when she started running FCPHD, it was unstable and
17 crashed repeatedly. I removed the module and crashes
18 ceased. I have heard one should only use Apple brand,
19 and/or premium RAM upgrades for this reason. Anybody
20 have any experience with this issue?

21 _____
22 chrisbabbitt

23 11-10-2004, 08:40 PM

24 Jim,

25 You might want to have Apple check out that PowerBook.
26 *There have been many reported failures of the lower*
27 *memory slot on Aluminum G4s.* I believe there is some sort
28 of recall underway.

Jim_Babcock

11-11-2004, 02:28 PM

Good suggestion, *but I checked with Apple and they said no. There IS a problem but involves only the 15 inch PB's. On some of those, RAM is simply not recognized. They suggested Apple branded memory which I am going to try.*¹

32. As other PowerBook users encountered memory slot problems, they posted queries on Apple's website. With the number of consumer complaints growing, Apple deleted a discussion thread containing over 350 posts about the PowerBook memory slot defect from its website:

Posted: May 9, 2005 9:35 PM by ggeoffre

Any update on this issue, I have been searching through the posts and have found that this is affecting certain PowerBooks for the *second time now*. It appears as if what ever is causing the lower slot to fail has not been resolved.

For those not familiar with the issue. Apparently the lower dimm slot on the main logic board fails to work. This may be the result of new power management updates to the software. It may be due to the fan not working and the PowerBook overheating and frying the main logic board. Does anyone know?

RE: Lower Memory Slot - Empty

Posted: Jul 31, 2005 7:45 PM in response to: [ggeoffre](#)

no resolution.

¹ See <http://www.2-popforums.com/forums/archive/index.php/t-68640.html> (emphasis added).

1 *apple has removed a 350+ post thread concerning this*
 2 *issue.*

3 google over to an independent site using search terms ram
 4 mac PowerBook logic board *failure*.
 5 keep this thread alive.²

6 (Typographical errors in original.). Despite Apple's attempts to thwart the public
 7 discussion of the PowerBook defects, consumers continued to complain about their
 8 PowerBook memory slots on the Apple website. The discussion forum spans over
 9 312 pages, with hundreds of comments about the PowerBook memory slot defect.

10 33. Frustrated by Apple's refusal to repair thousands of defective
 11 computers, consumers created an online petition beseeching Apple to provide a
 12 remedy for the widespread product defect. To date, the online petition includes over
 13 5,125 signatures and numerous accounts of defective PowerBook memory slots. For
 14 example:

15
 16 **27 Theodore Stalcup** - Oakland CA - 14 June 2005.

17 It seems unfair to demand hundreds of dollars to repair
 18 what is obviously a design or manufacturing flaw and
 19 something unrelated to use of the product by the consumer

20 * * *

21 **120 Paul Herrick** - Eugene, OR - 20 July 2005.

22 It is remarkable and shameful that the Apple corporation
 23 has made no effort to rectify the lower RAM slot failure on
 24 a system that is allegedly worth the extra money. I felt
 25 little irritation about this issue until I went online and did
 26 not even have to search to find a thread on the Apple

27 ² May 9, 2005 thread, "Lower Memory Slot – Empty" as seen at
 28 <http://discussions.apple.com/thread.jspx?messageID=1136942�> on
 September 17, 2009 (typographical errors in original, emphasis added).

support site with over 100 people who had the same problem. I find the \$300+ logic board replacement to be completely offensive, especially in light of the necessity for this very petition.

* * *

747 Kevin Pedersen - Bolinas, CA - 26 October 2005.

PB G4 Al / 1.25 GHz / (formerly) 1 GB:

Lower memory slot works only when one chip is installed. When both chips are installed, the lower slot is seen as empty (regardless of which chip is in the lower slot). . .

770 Trevor Sherwin - Canada - 31 October 2005.

I just had to buy a new PowerBook because the last one was out of warranty and you guessed it, the lower RAM slot failed. So I've had my new PowerBook for about 3 weeks now and I've *already run into the same problem!* *This defect affects every 15" PowerBook and it has to get fixed ASAP.* Apple, ask whoever is making these logic boards to fix the manufacturing defect. Then tell the world that you'll replace the logic board for all of us affected.

Apple Partners with Intel and Retires the PowerBook Brand

34. As complaints about the defective PowerBooks increased, Apple's CEO announced that Apple would begin producing Intel-based Mac computers in 2006. As part of its transition to an Intel-based system, Apple announced the retirement of the PowerBook brand.

35. While the June 6, 2005 announcement of the partnership between Apple and Intel stunned consumers, according to the technology press, the deal between Apple and Intel was anything but sudden. The technological sea-change in switching to Intel processors was developed in secret over a period of years.

36. Thus, consistent with its plans to retire the PowerBook brand, Apple ignored the obvious defect in its soon-to-be discontinued line of products.

1 37. In connection with its transition to an Intel processor, Apple began to
2 aggressively market a new laptop computer – the MacBook Pro. The MacBook Pro
3 was designed to replace the PowerBook in Apple’s product line.

4 38. Indeed, Apple’s conversion to Intel processors was completed ahead of
5 schedule – as complaints about the PowerBook memory slot defect escalated.

6 ***Apple Refuses to Correct Its Defective Computers***

7 39. Despite the inherent defect existing in the memory slots at the time the
8 computers were manufactured, Apple has refused to repair malfunctioning
9 PowerBook G4 computers or reimburse consumers for the cost of the repairs. Apple
10 has maintained its refusal to repair the defective computers, although the inherent
11 defect results in malfunction during the PowerBook’s useful life.

12 40. Apple claims that it is not obligated to repair defective PowerBook G4
13 computers when the inherent defect resulted in malfunction outside Apple’s
14 purported one-year limited warranty period. However, rather than the result of
15 natural “wear and tear” on its machines, the memory slot defect exists at the time of
16 manufacture, and renders the PowerBook substantially certain to malfunction during
17 the computer’s useful life. The more than 5,125 people who have signed the online
18 petition complaining of their defective PowerBooks can attest to this. Accordingly,
19 because the defect existed within the warranty period, Apple is obligated to repair,
20 replace, correct, or otherwise provide relief to its customers.

21 41. Moreover, Apple’s purported limitation of warranties is ineffective.
22 First, Apple’s purported limitation of warranties is provided to consumers within the
23 product packaging. Thus, a consumer obtains a copy of the warranty only after they
24 purchase the product and open the packaging.

25 42. In addition, consumers have no ability to negotiate the terms of the
26 express warranty, including the limitation of implied warranties. Indeed, the
27 warranty itself prohibits any bargaining over the terms of the limitation of implied
28 warranties, stating “No Apple reseller, agent, or employee is authorized to make any

1 modification, extension or addition to this warranty.” Thus, the limitation on
2 warranties – which is provided only *after* the sale – is a classic “take it or leave it”
3 contract of adhesion.

4 43. In addition, the unconscionability of Apple’s purported limitation of
5 warranties is compounded by Apple’s superior knowledge that it manufactured
6 defective computers that were substantively certain to malfunction within its
7 ordinary useful life, yet continued to sell them without correcting the defects or
8 warning purchasers.

9 44. After receiving thousands of complaints from its customers regarding
10 defective memory slots, Apple selectively extended the warranty available to some
11 PowerBook G4 customers. In 2006, Apple initiated the PowerBook G4 Memory
12 Slot Repair Extension Program (“Program”). The Program covered a limited
13 number of PowerBook G4 models experiencing memory slot problems. The
14 Program only covered PowerBooks manufactured between January, 2005 and April,
15 2005 and having eleven digit serial numbers in the following range: W8503xxxxxx-
16 W8518xxxxxx. The Program did not cover any PowerBook G4 outside of this serial
17 number range. Apple ended the program on July 24, 2008. The vast majority of
18 PowerBooks (which were manufactured and sold between 2001 and 2006) were not
19 covered by the Program.

20 45. Apple did not notify PowerBook purchasers of the defect, or the
21 Program. Adequately informed PowerBook purchasers could have checked the
22 functionality of their memory slots during their warranty period, and if discovered,
23 had Apple correct the defect.

24 46. Apple also did not notify PowerBook purchasers of the Memory Slot
25 Repair Program. Even those who would otherwise have received an extended
26 warranty, were not told of the defect or the Program, and could not get such
27 coverage after July 24, 2008.

1 47. Tens of thousands of people nationwide have purchased PowerBook
2 computers manufactured with defective memory slots. Aside from purchasers who
3 were covered by the Program, and acted before July 24, 2008, Apple has informed
4 Plaintiffs and other customers with defective PowerBooks that they have no recourse
5 other than to repair the defective memory slots at their own expense. Apple has
6 refused to warrant, repair or pay for any repairs relating to the PowerBook's
7 defective lower memory slot, or to warrant any PowerBooks should the defect
8 manifest itself sometime in the future.

9 48. To date, Apple has not taken effective action to remedy defective
10 memory slots in its PowerBook computers. To ensure that the memory slots in all of
11 its PowerBook computers were fit for their ordinary purpose during the computer's
12 useful life, Apple should have tested both memory slots prior to installing and
13 selling its PowerBook computers. Instead, Apple sold PowerBook computers with
14 memory slots that were not fit for ordinary use.

15 ***Plaintiff Reuben Berenblat Purchases a Defective PowerBook G4 Directly from***
16 ***Apple***

17 49. On or about July 12, 2005, Mr. Berenblat purchased directly from
18 Apple an Aluminum PowerBook G4 15", serial number W85252RYRG4.

19 50. In September 2008, Mr. Berenblat realized that his computer was not
20 working well. Thinking that he may require additional memory to optimize the
21 performance of his computer, Mr. Berenblat added memory to his computer.
22 However, his computer's performance only worsened.

23 51. Mr. Berenblat brought his computer to an Apple store in New York
24 City and was told that his hard drive was defective. However, it was later
25 determined that there was no problem with the hard drive; rather, the lower memory
26 slot was defective and degraded his computer's performance. Mr. Berenblat again
27 contacted Apple directly to have his computer repaired, and Apple refused to repair
28 or replace his defective computer.

1 52. As a result of the defect, Mr. Berenblat cannot use his PowerBook for
2 its ordinary and intended purpose, and has suffered damage.

3 ***Plaintiff Andrew Personette Receives a Defective PowerBook G4 Directly from***
4 ***Apple***

5 53. In 2005, Mr. Personette purchased a titanium PowerBook computer
6 with an AppleCare Protection Plan. However, Mr. Personette's titanium PowerBook
7 was defective. After returning his titanium computer to the Apple store in New
8 York City's Soho neighborhood several times for repair, Apple personnel
9 determined that the titanium PowerBook could not be fixed. Accordingly, in
10 exchange for his defective titanium PowerBook, in 2005, Mr. Personette received
11 from the Apple store an Aluminum PowerBook G4 15", serial number
12 W84080FANRW.

13 54. In 2007, Mr. Personette added memory to his PowerBook to increase its
14 functionality. However, shortly thereafter, in September 2007, Mr. Personette
15 noticed that his PowerBook was functioning very slowly and determined that the
16 computer did not recognize one of the memory cards because the lower memory slot
17 was defective.

18 55. Mr. Personette contacted Apple directly to have his computer repaired,
19 and Apple refused to repair or replace his defective computer.

20 56. As a result of the defect, Mr. Personette cannot use his PowerBook for
21 its ordinary and intended purpose, and has suffered damage.

22 ***Plaintiff Earl Simpson Purchases a Defective PowerBook G4 Computer from an***
23 ***Apple-Authorized Reseller***

24 57. On or about August 20, 2005, Dr. Simpson purchased an Aluminum
25 PowerBook G4 15", serial number W852545TRG4 from MacShop Northwest, an
26 Apple-authorized reseller and service provider.

27 58. Dr. Simpson sought to increase the RAM in his PowerBook to the
28 maximum of 2GB. However, on or about October 12, 2008, when Dr. Simpson

1 attempted to add memory to his PowerBook, he realized that the lower memory slot
2 was defective and did not recognize the memory.

3 59. Dr. Simpson was advised by Apple-authorized reseller and service
4 provider, The Portland Mac Store, to increase the RAM in the upper memory slot to
5 the maximum in the single memory slot of 1 GB. Thus, Dr. Simpson was not able to
6 obtain the maximum amount of memory that his computer should have been able to
7 utilize had it not been defective.

8 60. As a result of the defect, Dr. Simpson cannot use his PowerBook for its
9 ordinary and intended purpose, and has suffered damage.

10 ***Plaintiff Laura Miller Purchases a Defective PowerBook G4***

11 61. In or around early 2006, Ms. Miller purchased an Aluminum
12 PowerBook G4 15", serial number W8527057RG3 from a third-party internet
13 vendor.

14 62. Shortly after purchasing her PowerBook, Ms. Miller experienced
15 problems and returned the computer to Apple. In June 2006, Apple replaced the
16 motherboard of her PowerBook.

17 63. Because of her initial problems, Ms. Miller purchased an AppleCare
18 Protection Program to cover her PowerBook computer.

19 64. Just after expiration of her AppleCare extended protection, Ms. Miller's
20 computer again failed. At this time, Ms. Miller learned that the lower memory slot
21 of her PowerBook G4 was defective and did not recognize the memory that she
22 attempted to load into the computer. Thus, Ms. Miller was not able to obtain the
23 maximum amount of memory that her computer should have been able to utilize had
24 it not been defective.

25 65. As a result of the defect, Ms. Miller cannot use her PowerBook for its
26 ordinary and intended purpose, and has suffered damage.

1 ***Plaintiff Thomas Wagner Purchases a Defective PowerBook G4***

2 66. In the Summer of 2005, Plaintiff Thomas Wagner purchased a
3 PowerBook G4 15", 1.67 MHZ, with the serial number W851526GRG4 from a
4 third-party internet vendor. He purchased it with the 3-year Apple Care warranty
5 coverage.

6 67. While covered under Apple Care, he twice sent his computer to Apple
7 to repair other issues. He purchased two 1GB SO-DIMMs memory expansion from
8 the Apple Store in March of 2006. He noticed at times that his computer appeared
9 sluggish. He had not been told by Apple about the RAM slot defect, even when his
10 machine was being repaired by Apple for other issues.

11 68. In January of 2009, Mr. Wagner's computer stopped making a startup
12 tone. Upon opening the "about this Mac" tab, Mr. Wagner learned his computer was
13 only recognizing 1GB of RAM. He does not know how long his PowerBook failed
14 to recognize his lower RAM slot.

15 69. Mr. Wagner called AppleCare who suggested the problem was the
16 memory card. Only upon calling his local computer shop was he told of the memory
17 slot defect. He was also told of Apple's Memory Slot Repair Program. His machine
18 (based upon its serial number) would appear to have been eligible for the program.
19 However, he was not made aware of the program, nor any need to examine his
20 machine, run diagnostics, or get the memory slot replaced until after the program
21 ended in July of 2008.

22 70. As a result of the memory slot defect, Mr. Wagner is not able to obtain
23 the maximum amount of memory that his computer should have been able to utilize
24 had it not been defective.

25 71. As a result of the defect, Mr. Wagner cannot use his PowerBook for its
26 ordinary and intended purpose, and has suffered damage.

1 ***Plaintiff Scott Meyer Purchases a Defective PowerBook***

2 72. Mr. Meyer bought a PowerBook G4 from Apple online in June 2005,
3 serial number W85243ATSQ7. He also purchased Apple Care.

4 73. Mr. Meyer noticed that the machine was running slowly. He took his
5 machine to two registered Apple repair stores in 2008. The technicians did not
6 diagnose the problem. He purchased an additional 1 GB RAM card in December
7 2008 for \$35.04. When he went to install it, he learned there was a 512 GB card
8 already in the lower memory slot, that was not being recognized by the computer.
9 While he has two 1 GB RAM cards, he is only able to use one of them. Mr. Meyer
10 learned about the RAM slot defect not by Apple's technicians, but by looking online.
11 He also learned that his PowerBook was not covered by the Memory Slot Repair
12 Program, and that Apple had refused to repair or replace the PowerBooks of
13 similarly situated PowerBook owners.

14 74. As a result of the memory slot defect, Mr. Meyer is not able to obtain
15 the maximum amount of memory that his computer should have been able to utilize
16 had it not been defective.

17 75. As a result of the defect, Mr. Meyer cannot use his PowerBook for its
18 ordinary and intended purpose, and has suffered damage.

19 ***Thousands of Consumers Have Suffered Losses as a Result of Apple's***
20 ***Manufacture of Defective PowerBook G4 Computers***

21 76. There have been numerous consumer complaints to various Federal and
22 State authorities about the PowerBook's defective lower memory slots, and, as set
23 forth above, web sites are full of consumers who have complained about the fact that
24 their PowerBook computers' memory slots do not work. Consumers have posted
25 complaints stating that they have had to repair the defective memory slot at their
26 own expense, that Apple has refused to reimburse them for the expense incurred, and
27 that Apple has refused to exchange defective PowerBooks for PowerBooks with
28 properly functioning memory slots. Given the prevalence of complaints, discovery

1 will likely reveal Apple's awareness of the inherent defect in the PowerBook
2 computers.

3 77. Apple continued to manufacture and sell PowerBook computers with
4 defective memory slots even after receiving thousands of complaints informing it of
5 the specific defect alleged herein. Indeed, Apple's removal of a discussion thread
6 regarding the PowerBook memory slot defect from Apple's own website confirms
7 that Apple was aware of the problem and took active steps to conceal it. As such,
8 Apple profited enormously from sales of its PowerBook G4 computers while
9 Plaintiffs and the Class incurred significant damages, including but not limited to the
10 expenses incurred in repairing or replacing their defective PowerBook computers.

11 78. Apple has, and continues to this day, refused to respond to the
12 thousands of customer complaints regarding the PowerBook's defective memory
13 slot, and has refused to repair at its own expense the defective memory slot or
14 compensate thousands of PowerBook purchasers who repaired the defective memory
15 slot at their own expense.

16 79. As referred to above, no adequate notice has been provided to Plaintiffs,
17 and no consent or bargained-for approval has been granted by Plaintiffs or other
18 Apple customers who purchased PowerBook computers, including the PowerBook
19 G4, that their computers have defective memory slots. Nor did Defendant provide
20 any notice, adequate notice or full disclosure of the fact that its PowerBook
21 computers have defective memory slots.

22 **CLASS ACTION ALLEGATIONS**

23 80. Plaintiffs bring this action on their own behalf and additionally,
24 pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of a
25 nationwide class of all persons who have purchased PowerBook computers with one
26 or more defective memory slots, during the period from January 1, 2005, to the
27 present (the "Class") and a sub-class of persons who purchased PowerBook
28 computers directly from Apple (the "Sub-Class").

81. Excluded from the Class is Defendant; any parent, subsidiary, or affiliate of Defendant; any entity in which Defendant has or had a controlling interest, or which Defendant otherwise controls or controlled; and any officer, director, employee, legal representative, predecessor, successor, or assignee of Defendant; and the judge to whom this case is assigned and his or her immediate family.

82. This action is brought as a class action for the following reasons:

a. The Class consists of at least thousands of persons and is therefore so numerous that joinder of all members, whether otherwise required or permitted, is impracticable;

b. There are questions of law or fact common to the Class that predominate over any questions affecting only individual members, including:

i. whether Defendant breached the implied warranty of merchantability arising pursuant to Cal. Comm. Code § 2314 by manufacturing and selling PowerBook computers with defective memory slots;

ii. whether Defendant violated Cal. Bus. & Prof. Code § 17200 by manufacturing and selling PowerBook computers with defective memory slots;

iii. whether Defendant unjustly enriched itself in manufacturing and selling PowerBook computers with defective memory slots;

iv. whether members of the Class have sustained damages and/or other compensable losses and, if so, the proper measure thereof; and

v. whether Defendant should be enjoined from selling PowerBook computers with defective memory slots.

c. The claims asserted by Plaintiffs are typical of the claims of the members of the Class;

1 d. Plaintiffs will fairly and adequately protect the interests of the
2 Class, and Plaintiffs have retained attorneys experienced in class and complex
3 litigation, including related litigation involving consumer fraud;

4 e. A class action is superior to other available methods for the fair
5 and efficient adjudication of the controversy, for at least the following reasons:

6 i. Absent a class action, Class members as a practical matter
7 will be unable to obtain redress, Defendant's violations of its legal obligations will
8 continue without remedy, additional customers will be harmed, and Defendant will
9 continue to retain its ill-gotten gains;

10 ii. It would be a substantial hardship for most individual
11 members of the Class if they were forced to prosecute individual actions;

12 iii. When the liability of Defendant has been adjudicated, the
13 Court will be able to determine the claims of all members of the Class;

14 iv. A class action will permit an orderly and expeditious
15 administration of Class claims, foster economies of time, effort, and expense and
16 ensure uniformity of decisions; and

17 v. The lawsuit presents no difficulties that would impede its
18 management by the Court as a class action.

19 f. Defendant has acted on grounds generally applicable to Class
20 members, making class-wide monetary and injunctive relief appropriate; and

21 g. The prosecution of separate actions by individual members of the
22 Class would create a risk of incompatible standards of conduct for Defendant and of
23 inconsistent or varying adjudications for all parties.

24 83. Defendant's violations of the common law are applicable to all
25 members of the Class, and Plaintiffs are entitled to have Defendant enjoined from
26 engaging in unlawful conduct in the future.

FIRST CAUSE OF ACTION

**(Violation of California Business and Professions Code § 17200 *et seq.* –
On Behalf of the Class and Sub-Class)**

84. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 83 above as if fully set forth herein.

85. California Business and Professions Code § 17200 prohibits acts of unfair competition, including any “unlawful, unfair or fraudulent business act or practice[.]”

86. Apple has engaged in an unlawful and unfair business acts or practices in California and nationwide, in violation of Cal. Bus. & Prof. Code § 17200, by manufacturing and selling PowerBook computers with defective memory slots to Plaintiffs and other members of the Class, by failing to use reasonable care to test the memory slots in its PowerBook computers prior to sale, and by continuing to sell PowerBook computers with defective memory slots even after learning that the memory slots in its PowerBook computers were defective, all in violation of Cal. Com. Code § 2314, U.C.C. §§ 2-314, and the common law.

87. As described herein, Defendant’s conduct in manufacturing and selling computers with an inherent defect that was substantially certain to result in malfunction during the computers’ useful lives caused and continues to cause substantial injury to consumers, including Plaintiffs and the other members of the Class. The California Commercial Code, as well as other state and federal law, embodies the public policy that prohibits manufacturers from selling such defective goods to consumers and then refusing to repair or replace the defective product, particularly when the seller knows of the defect.

88. As also described herein, Defendant failed to repair or replace the defective laptops purchased by its customers when they were brought in for repair as per their one-year warranty or Apple Care extended protection. Apple engaged in an unfair and fraudulent business practice in not informing their customers about the

1 defect until after their warranty protections lapsed. Defendant's acts are manifestly
2 unfair to the Plaintiffs and the Class.

3 89. Furthermore, as there were reasonable alternatives available to Apple to
4 further its business interests other than voluntarily placing into the stream of
5 commerce PowerBook computers with defective memory slots, the gravity of
6 Defendant's wrongful conduct outweighs any purported benefits attributable to such
7 conduct.

8 90. As a direct and proximate result of Defendant's actions as described
9 herein, Plaintiffs and other members of the Class have suffered, and continue to
10 suffer, injury in fact and have lost money as a result of Defendant's deception and
11 unfair and unlawful business practice in an amount which will be proven at trial, and
12 which is in excess of the requisite jurisdictional amount.

13 91. By reason of the foregoing, Defendant has violated Cal. Bus. & Prof.
14 Code § 17200, and is liable to Plaintiffs and the other members of the Class for
15 restitution and all other appropriate remedies, plus costs and attorneys' fees.

16 **SECOND CAUSE OF ACTION**

17 **(Breach of Implied Warranty of Merchantability Pursuant to** 18 **Cal. Comm. Code § 2314 – On Behalf of the Sub-Class)**

19 92. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1
20 through 91 above as if fully set forth herein.

21 93. Defendant is a merchant with respect to computers, including
22 PowerBook computers manufactured and sold under the Apple brand.

23 94. Plaintiffs Berenblat, Personette and Meyer acquired directly from
24 Defendant PowerBook G4 computers. An implied warranty that each Plaintiff's
25 PowerBook G4 was merchantable arose by operation of law as part of the sale, and
26 as part of the sales of PowerBook computers to other members of the Sub-Class.

27 95. Defendant breached the implied warranty of merchantability in that the
28 PowerBook computers sold to Plaintiffs Berenblat, Personette and Meyer and the

1 Sub-Class were not in merchantable condition when sold or at any time thereafter, in
2 that Plaintiffs' and the Sub-Class' PowerBook computers have defective memory
3 slots that were substantially certain to result in the computer's malfunction during
4 the computer's useful life, and, in fact, did result in malfunction during the
5 computer's useful life.

6 96. When purchasing their PowerBook computers, Plaintiffs Berenblat,
7 Personette, and Meyer and the Sub-Class were not aware of the memory slot defect
8 as the defect was and is not open or obvious.

9 97. Any attempt by Apple to limit the duration and scope of the implied
10 warranty of merchantability is unreasonable, unconscionable and void as Apple
11 knew or recklessly disregarded the fact that the memory slot defect existed at the
12 time of manufacture and might not be discovered, if at all, until such time as a
13 PowerBook owner would attempt to install additional memory and uncover the fact
14 that the one or both of the memory slots were defective. Apple withheld information
15 about the memory slot defect from PowerBook owners intending that owners would
16 not uncover the inherent defect until such time as any Apple express warranty in
17 effect expired. Moreover, the terms of Apple's express warranty were not subject to
18 negotiation, unreasonably favored Apple, and were not provided to consumers prior
19 to sale thus rendering any limitations unconscionable.

20 98. As a result of Apple's breach of the implied warranty of
21 merchantability, Plaintiffs and the Sub-Class have suffered incidental and
22 consequential damages, including expenses incurred to repair the memory slot defect
23 or replace their PowerBook computers, and damages representing the difference
24 between the value of the defective PowerBooks purchased and the value the
25 PowerBooks would have had if they had been as warranted and did not have
26 defective memory slots.

1 99. By reason of the foregoing, Defendant is liable to Plaintiffs and the
 2 other members of the Sub-Class for the damages that they have suffered as a result
 3 of Defendant's actions, the amount of such damages to be determined at trial.

4 **THIRD CAUSE OF ACTION**

5 **(Unjust Enrichment – On Behalf of the Class and Sub-Class)**

6 100. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1
 7 through 99 above as if fully set forth herein.

8 101. Plaintiffs and the Class have conferred benefits on Defendant by paying
 9 value for computers that they reasonably expected to be fully functioning during the
 10 computers' useful life. However, Plaintiffs did not purchase fully functioning
 11 computers as a result of an inherent defect known to Defendant.

12 102. Defendant knowingly and willingly accepted monetary benefits from
 13 Plaintiffs and the Class, although Defendant did not provide consumers with fully-
 14 functioning computers. Rather, Defendants profited from the sales of inferior and
 15 defective products.

16 103. Under the circumstances described herein, it is inequitable for
 17 Defendants to retain the full monetary benefit at the expenses of Plaintiffs and the
 18 Class.

19 104. By engaging in the conduct described above, Defendant has unjustly
 20 enriched itself at the expense of Plaintiffs and the Class and is required, in equity
 21 and good conscience, to compensate Plaintiffs and the Class for harm suffered as a
 22 result of Defendant's actions.

23 105. As a direct and proximate result of Defendant's unjust enrichment,
 24 Plaintiffs and the Class have suffered injury and are entitled to reimbursement,
 25 restitution, and disgorgement from Defendant of the benefit conferred by Plaintiffs
 26 and the Class.

1 WHEREFORE, Plaintiffs respectfully requests that the Court enter judgment
2 against Defendant as follows:

3 1. Certifying this action as a class action, pursuant to Rule 23(a) and
4 23(b)(3) of the Federal Rules of Civil Procedure, with a class as defined above;

5 2. On Plaintiffs' First Cause of Action, awarding Plaintiffs all appropriate
6 remedies, including, but not limited to restitution, plus costs and attorneys' fees;

7 3. On Plaintiffs' Second Cause of Action, awarding against Defendant the
8 damages that Plaintiffs and the other members of the Class have suffered as a result
9 of Defendant's actions, the amount of such damages to be determined at trial;

10 4. On Plaintiffs' Third Cause of Action, awarding Plaintiffs and the Class
11 all appropriate remedies, including but not limited to reimbursement, restitution, and
12 disgorgement of all profits unjustly retained by Defendant;

13 5. Awarding Plaintiffs interest, costs and attorneys' fees; and

14 6. Awarding Plaintiffs such other and further relief as this Court deems
15 just and proper.

16
17 DATED: September 21, 2009 Respectfully submitted,

18 CALDWELL LESLIE & PROCTOR, PC
19 ROBYN C. CROWTHER
20 ERIC S. PETTIT

21 By /s/Robyn C. Crowther
22 ROBYN C. CROWTHER
23 Attorneys for Plaintiffs
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27
28

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs hereby demand a trial by jury.

DATED: September 21, 2009 Respectfully submitted,

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